UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

JERSEY SHORE UNIVERSITY MEDICAL CENTER, HACKENSACK MERIDIAN HEALTH

and

HEALTH PROFESSIONALS AND ALLIED EMPLOYEES, AFT, AFL-CIO

Case No. 22-RC-263932

JERSEY SHORE UNIVERSITY MEDICAL CENTER'S EMERGENCY MOTION TO STAY MAIL BALLOT ELECTION

Employer Jersey Shore University Medical Center, a Division of Hackensack Meridian Health ("JSUMC" or "Hospital"), pursuant to Section 102.67(j) of the National Labor Relation Board's ("NLRB" or "Board") Rules and Regulations, respectfully requests the Board grant this emergency motion to stay the mail ballot election ordered to by the Regional Director, currently set to begin on October 2, 2020, pending the Board's ruling on JSUMC's Request for Review and ultimate decision on the mail ballot election determination.

Alternatively, JSUMC requests the Board to impound the ballots pending the Board's ruling on JSUMC's Request for Review and ultimate decision on the mail ballot election determination.

I. BACKGROUND.

On August 27, 2020, Board Agent Eric Pomianowski, designated as the Hearing Officer ("HO"), conducted a representation case hearing in this case. The sole issue for the hearing was whether the Regional Director should direct an in-person, manual ballot election or a mail ballot election. At the hearing, JSUMC reiterated its pre-hearing position that it intended to offer two

fact witnesses, Douglas Campbell, its Director of Operations and Risk Management, and Dr.

Jerry Zuckerman, its Vice President, Infection Prevention and Control, to present and explain its proposed election plan and to provide expert medical testimony concerning the science behind the risk of transmission of COVID-19 under that plan. HO Pomianowski, after consulting with Regional management, precluded JSUMC from presenting either of its witnesses on the ground that election mechanics are non-litigable and committed to the Regional Director's discretion.

JSUMC subsequently filed two special appeals with the Region: (1) Request for Special Permission to Appeal the HO's ruling on the witness testimony issue; and (2) Request for Special Permission to Appeal the HO's Ruling admitting certain Board exhibits at the hearing, as they were not-relevant and outdated COVID-19 data. The Regional Director subsequently granted both requests for review, while denying the requests on the merits.

The Decision and Direction of Election, which includes the Order, issued on September 15, 2020 ("Order"). The Regional Director's Order misconstrues or simply ignores record facts about JSUMC's election plan, the threat currently presented by COVID-19 on JSUMC's campus and the import of various executive orders issued by New Jersey Governor Philip D. Murphy. The Regional Director compounded these factual errors by refusing to admit and consider the testimony of JSUMC's witnesses, including a medical expert in infectious disease, Dr. Jerry Zuckerman. The Regional Director also misapplied the Board's established law on when a potential voting unit is "scattered" and, consequently, a mail ballot election is appropriate.

Consequently, the Regional Director's abuse of discretion has resulted in the scheduling of a mail ballot election to begin on October 2, 2020, in contradiction of the clear Board preference for in-person elections. In light of the particular circumstances of this case, the Regional Director's abuse of discretion calls for extraordinary relief in the form of a stay of the

scheduled mail-ballot election pending the Board's ruling on JSUMC's Request for Review and, if granted, the Board's ultimate decision on the mail-ballot election determination.

II. ARGUMENT.

Section 102.67(j)(1) allows a party requesting review to also move to stay the election and move to impound some or all of the ballots. To obtain extraordinary relief, the moving party must make "a clear showing that it is necessary under the particular circumstances of the case." 29 C.F.R. §102.67(j)(2).

For the reasons set forth in JSUMC's Request for Review, which demonstrate the Regional Director's clear abuse of discretion in ordering a mail ballot election, the circumstances of this particular case warrant a stay of the scheduled election. The present case involves an acute care hospital with enhanced virus control protocols presently in place, located in Monmouth County, New Jersey, where infection rates have declined dramatically, and where JSUMC has committed to implementing all of the additional recommendations for a safe manual election in General Counsel Memorandum 20-10 (July 6, 2020) as part of its comprehensive election plan. *See* JSUMC Request for Review ("RFR"), at 12-20. As in *Aspirus Keweenaw*, 370 NLRB No. 13 (Aug. 25, 2020), where the Board recently granted review of an order directing a mail ballot election, this case presents a situation wherein an acute care hospital has demonstrated that it can conduct a safe manual election and a Regional director has arbitrarily disregarded the facts and applicable law to direct an mail ballot election. The Regional Director's clear abuse of his discretion, as fully explained in JSUMC RFR, warrants an immediate stay.

III. CONCLUSION.

For the foregoing reasons, the Board should grant JSUMC's Emergency Motion to Stay the presently scheduled mail ballot election pending the Board's decision on JSUMC's Request for Review and ultimate judgment on the mail ballot election determination because extraordinary relief is required in view of the Regional Director's abuse of discretion in ordering a mail ballot election.

In the alternative, the Board should impound the ballots until the Board has considered JSUMC's Request for Review and reached an ultimate judgment on the mail ballot election determination.

Dated: September 21, 2020 Respectfully submitted,

/s/ Christopher J. Murphy

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CERTIFICATE OF SERVICE

The undersigned, an attorney, affirms under penalty of perjury that on September 21, 2020, he caused a true and correct copy of JSUMC's Emergency Motion to Stay Mail Ballot Election to be served upon counsel for the parties:

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